IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.883 OF 2001

IN

WRIT PETITION NO.480 OF 1997

Hindustan Lever Employees Union. ...Appellant

vs.

Hindustan Lever Ltd. ...Respondent.

Mr.Sanjay Singhavi i/b. Ms.Jane Cox, for Appellant.

Mr.P.K.Rele with Vinod Tayade i/b. Piyush Shah, for Respondent.

CORAM: D.K.DESHMUKH &

J.H. BHATIA, JJ.

DATED: 12th September, 2007.

P.C.:-

1. By this appeal the appellant challenges the order passed by the learned Single Judge of this Court dated 24.1.2001 passed in Writ Petition no.480 of 1997, to a limited extend. That writ petition was filed by the present respondent challenging the order passed by the Industrial Court in the Complaint (ULP) No.625 of 1987. That complaint was filed by the Trade Union which is appellant in this appeal. That complaint was disposed of by order dated 20.2.1997. By that order, the Industrial Court directed the present respondent employer to classify the watchmen mentioned Annexure A, B and C with the Complaint, as permanent workmen of the Respondent Company and to grant them wages, privileges and benefits as are applicable to the other watchmen from the date of filing of the complaint. Against that order, writ petition

no.480 of 1997 was filed. One of the grievance against the order of the Industrial Court by the respondent was that the following five workmen viz. (1) Prem Singh, (2) B. Thakur, (3) I.R.Parihar, (4) Prakash Palav and (5) Bhimrao, are not entitled to the benefits because they have ceased to work with the Company. The learned Single Judge by the order impugned in the appeal has dismissed the petition filed by the Company. In paragraph 16 of the order the learned Single Judge has observed thus:-

> "I, therefore, hold that the petitioner company has engaged in and is engaging in unfair labour practice within the meaning of Items 5, 6 and 9 of the Schedule IV of the Act. I do not find any reasons to interfere with the Impugned order of the Industrial Court directing the Petitioner company to classify the concerned watchmen mentioned in Annexure A, B and C with the complaint as permanent workmen of the petitioner company and to grant

> them wages, privileges and benefits as are applicable to other watchmen from the date of filing of the complaint dated 2nd July,1987."

There is no grievance made by the appellant against this part of the order. The grievance made by the appellant is about the following part of the order:-

> "I may clarify here that this Order would apply to all such watchmen who are presently working with the company as far as the relief of permanency is concerned."

The grievance of the appellant is that the five watchmen whose names are mentioned above ceased to be in the employment not of their own volition but they ceased to be in the employment because they got themselves registered with the Board and the Board did not allot them to the respondent-company. Perusal of the judgment of the learned Single Judge shows that though the learned Single Judge has modified the order passed by the

Industrial Court in relation to the above referred five watchmen, in the body of the judgment there are no reasons given for making such order. Obviously, therefore, as the modification of the order of the Industrial Court has been ordered by the learned Single Judge without assigning any reasons, that part of the order of the learned Single Judge modifying the order of the Industrial Court in relation to the above referred five watchmen is liable to be set aside. However, the fact remains that “whether the above referred five watchmen ceased to be in the employment of the respondent-company on their free will or volition or they were forced into that situation, is a question of fact which cannot be decided for the first time in this appeal. When we put this to the learned Counsel appearing for the appellant he submitted that appellant is willing to adopt the remedy of raising an industrial dispute in relation to the rights of the concerned five persons. In our

opinion, therefore, the following order would meet the ends of justice:-

The order of the learned Single Judge in so far as it holds that the above referred five watchmen are not entitled to the benefits of permanency because they are not presently in the employment of the Company, is set aside. It is made clear that as a consequence of this order the above referred five watchmen would not be able to claim all the benefits of the order of the Industrial Court. They will have to adopt appropriate proceedings to secure that relief. The above referred five watchmen and the trade union are granted liberty to adopt any appropriate remedy that may be available to them under the Law for getting the benefits of permanency in the service of the respondent company, if they are entitled to it under the law.

It is clarified that as a result of this order though the above referred watchmen do not get the benefits of permanency and continuation in the service of the company. However, they will be entitled to the monetary benefits that flow from the order of the Industrial Court for the period from the date of the Complaint to the date they were working with the respondent Company. Those monetary benefits shall be paid to them by the respondent-Company in terms of the order of the Industrial Court.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)